



Department of Law Monthly Report

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Bruce M. Botelho
Attorney General

Barbara J. Ritchie
Deputy Attorney General – Civil Division

Patrick J. Gullufsen
Deputy Attorney General – Criminal Division

Collections & Support

ATTACHMENT PROCESS FOR 2002 PFD BEGINS

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During June, the unit began the attachment process for the 2002 permanent fund dividends. Writ packages were prepared and mailed to courts statewide to allow seizure of criminal defendants' dividends. The unit also reviewed all civil collection files, closed 28 files which were considered uncollectable, and prepared 27 Writs of Execution for attachment of permanent fund dividend checks. The unit closed three OSHA penalty collection files and prepared Writs of Execution for garnishments of bank accounts in two cases. On the criminal side, the unit sent 35 letters responding to inquiries from defendants and courts regarding payment agreements and other collection issues.

\$40,000 IN RESTITUTION PAYMENTS RECEIVED IN JUNE

In June, the collections unit received 115 criminal restitution judgments and 24 juvenile restitution orders for collection. Initial notices were sent to 141 recipients. We received voluntary payments totaling \$29,018.76

toward criminal restitution judgments and payments totaling \$9,167.30 toward juvenile restitution judgments in June. We requested 47 disbursement checks, and issued 23 checks to recipients.

COURT UPHELD SUSPENSION OF DRIVER'S LICENSE

AAG Richard Sullivan successfully defended CSED against a petition filed by child support obligor, Jesse Sharp, for relief from CSED's suspension of his driver's license. Sharp filed his petition in May 2002, shortly after discovering that CSED had suspended his license for failure to pay support. In August 2001, CSED had sent Sharp a notice of its intent to suspend his driver's license pursuant to AS 25.27.246. The notice informed Sharp that unless he requested an administrative review under AS 25.27.246(f), his license would be suspended in January 2002. Sharp failed to request a review, and his license was suspended. In May 2002, Sharp filed an untimely petition with the superior court for relief under ARCP 90.5, and a hearing was set. Mr. Sullivan filed a motion to dismiss the petition, arguing that Sharp's petition failed to conform to the requirements of the rule and statute and, therefore, was untimely. The court agreed and dismissed Sharp's petition. CSED released Sharp's license shortly thereafter when Sharp worked out a payment agreement with CSED.

COURT CONSIDERS IMPACT OF "PRIVATE AGREEMENT" ON CHILD SUPPORT OBLIGATIONS

AAG Jeff Killip is seeking reconsideration of an order requiring CSED to refund money which it had already disbursed to the custodial parent. In this divorce action, the court had approved a settlement agreement, which allowed the husband, Mr. Belz, to make his former wife's car and insurance payments in lieu of child support. After Mr. Belz had paid several thousand dollars under the agreement, payments that he thought would be applied to his child support obligation, his ex-wife applied for CSED services. CSED

did not give credit for the direct payments and determined that Mr. Belz owed more than \$9,000. CSED began collecting this amount, which was in addition to Mr. Belz' direct payments. Mr. Belz filed a motion with the superior court, challenging CSED's actions.

On May 22, 2002, the court held a hearing, at which a CSED employee was subpoenaed to testify as a witness. CSED did not, however, participate as a party to the action. After the hearing, Judge Cutler ordered CSED to give Mr. Belz credit for the car and insurance payments and to refund any monies collected in excess of his child support obligation. We immediately filed a motion for reconsideration, arguing primarily that CSED is not bound by "private agreements" reached between former spouses concerning child support under AS 25.27.065(c) and state, *CSED v. Green*, 983 P.2d 1249 (Alaska 1999). The parties are currently trying to resolve the conflict without further litigation.

COURT GRANTS MOTION TO MODIFY CHILD SUPPORT

A hearing was held in the Palmer superior court on a motion to modify child support filed by AAG Connie Carson in the *Makinson* case. Makinson had not submitted income information, so CSED based its calculation on occupational wage statistics for a commercial pilot in Florida (where Makinson then lived). Makinson eventually submitted tax returns, but the information was inconsistent and the returns were incomplete. At the hearing, Makinson confirmed that he spends 75% of his time as a mechanic and 15% of his time as a pilot. However, he had recently moved to Canada to work on his family's farm, and he conceded that the farm does not generate any profit or income. Makinson could not reconcile the inconsistencies on his tax returns.

Based on Makinson's testimony, Ms. Carson revised her request for modified support to an occupational wage statistic from Florida for an airline mechanic. Makinson's counsel objected strenuously, but the court granted Ms. Carson's request and found that Makinson is clearly underemployed and has demonstrated his experience and skill as an airline mechanic. On June 28, 2002, the court signed the order for modification requiring Makinson to pay \$472 per month for one child.

Environmental

KUROSHIMA SPILL SETTLEMENT

The state and United States jointly settled the governments' natural resource damages claims resulting from the spill of 39,000 gallons of fuel from the M/V Kuroshima in Dutch Harbor in November 1997.

The approximately \$1,000,000 settlement will be used to reimburse the state and U.S. for costs related to natural resource injuries and for projects to restore natural resources injured by the fuel spill. The projects include operation of a fish weir on a local salmon stream, revegetation of the banks and stabilization of a road along a local salmon spawning lake, removal of debris from a local recreational beach, a bird restoration project to remove nonindigenous foxes from a nearby island, a public education project, and a project to build tent platforms and weatherport style tents for community use. The Qawalangin Tribe participated in the negotiations with the vessel owners and will implement some of the restoration projects.

The state's cost recovery and penalty claims against the vessel owners were settled last year for approximately \$650,000. As part of that settlement the vessel owners also conveyed title to a container of response and cleanup equipment to ADEC. The container is stored in Dutch Harbor and is available for use in future

spills. AAG Alex Swiderski represented the state in this matter.

Fair Business Practices

OCCUPATIONAL LICENSING SUSPENDS LICENSES OF MIDWIFE AND NURSE

On May 21, 2002, the Division of Occupational Licensing suspended the license of a Kodiak direct-entry midwife due to her breach of a prior memorandum of agreement (MOA) in which she had agreed to a suspension of her license while she complied with certain continuing education requirements. The division contends that the midwife continued to practice during the time of the voluntary suspension, which violated the MOA, and the division invoked the automatic suspension provision included in it. On June 11, 2002, the midwife requested a hearing with regard to the suspension. AAG Robert Auth is representing the division in the disciplinary proceeding.

On June 26, 2002, the Board of Nursing adopted a memorandum of agreement (MOA) between the Division of Occupational Licensing and an Anchorage registered nurse, which settled an ongoing disciplinary action. The nurse agreed to a 30-day suspension and a \$4,000 fine (with \$1,000 suspended) based on the fact that on two separate occasions, her conduct with a patient went outside the scope of practice allowed by a registered nurse. AAG Auth represented the division in the disciplinary action.

ALASKA SUPREME COURT AFFIRMS RCA IN CHUGACH ELECTRIC CASE

In *Chugach Electric Association v. Regulatory Commission of Alaska*, the Alaska Supreme Court affirmed the order of the RCA that required Chugach Electric to

apply for a certificate of public convenience and necessity before it could implement retail electric competition by attempting to serve ML&P's customers. This decision affirms the RCA's power to review and approve any market structure changes before they occur. Chugach had made a novel antitrust argument that the state utility statutes had to be interpreted narrowly because of the Sherman Act. This argument was rejected by the court. The state regulation of the utility was held to be within the state action doctrine and exempt under the Sherman Act. AAGs Ron Zobel and Ed Sniffen briefed and argued this case.

Governmental Affairs

HAINES CONSOLIDATION ELECTION LAWSUIT

The state prevailed in an action filed in superior court in Juneau seeking an injunction against the Haines consolidation election. A number of registered voters from the Haines area filed a request for injunctive relief to enjoin the election, and a motion for expedited consideration. The plaintiffs challenged the Division of Elections' decision to conduct the consolidation election as a "by-mail" election. The plaintiffs filed their lawsuit after the election was well underway. They asked that the court stop the election, force the division to start over, and conduct the election as an "in-person" election. The judge granted the plaintiffs' request for expedited consideration and held a hearing on very short notice to consider the plaintiffs' claims.

At the June 21, 2002, hearing, the plaintiffs and the state presented evidence and argument in support of their positions. Judge Collins ruled from the bench that she would not enjoin the election, and that she would consider dismissing the action because it appeared that the state was entitled to conduct the election by mail as a matter of law. The plaintiffs objected to this, and the judge agreed to take additional

briefing on this matter. The parties have filed their additional briefing, and are now awaiting Judge Collins' decision on this matter.

SUPERIOR COURT FINDS THAT STATE EMPLOYEES CAN GRIEVE THE DENIAL OF A STATE-PROVIDED LEGAL DEFENSE WHEN THE EMPLOYEE IS SUED FOR WORKPLACE MISCONDUCT

The superior court reversed a decision of the Alaska Labor Relations Agency that a union had waived any right to grieve the state's refusal to provide a defense to an employee who was sued personally for work-related conduct. The parties' collective bargaining agreement provided that the state would provide a defense to an employee and indemnify a judgment against the employee when the employee was sued for conduct in the scope of the employee's job duties unless the employee had committed willful misconduct or gross negligence. The agreement further provided that a decision to deny a defense or indemnification was not subject to the agreement's grievance arbitration clause. The court concluded that the union could not waive arbitration in the agreement, relying on AS 23.40.210. That section states in part that, "The agreement shall include a grievance procedure which shall have binding arbitration as its final step." An appeal is being considered. *Public Safety Employees Ass'n v. State*, Case No. 3AN-01-10051 CI (6/25/02).

NINTH CIRCUIT COURT OF APPEALS AFFIRMS SUMMARY JUDGMENT FOR STATE IN WRONGFUL DISCHARGE SUIT

The Ninth Circuit Court of Appeals upheld U.S. District Court Judge Holland's decision granting summary judgment to the state and two individual defendants in a wrongful-termination suit by a former cook at the Spring Creek Correctional Center. The Department of Corrections terminated the cook's employment in May 1998. Although

an arbitrator upheld the termination, the former cook sued the state and individual defendants in state court and, later, federal court. The state court granted summary judgment to the state and the other defendant. The Alaska Supreme Court upheld the summary judgment on appeal, but remanded to the superior court an issue regarding the award of attorney's fees to the state. Based on the state-court judgment, the federal court also granted summary judgment. The Ninth Circuit affirmed that decision in a memorandum opinion, without hearing oral argument. Once the superior court resolves the remanded attorney-fees issue, the lawsuits flowing from the discharge of the cook more than four years ago should be over.

Human Services

JUNEAU HUMAN SERVICES HAS NEW SUPERVISING ATTORNEY

AAG Kristen Bomengen left her position as supervisor of the Human Services section in Juneau to become an assistant borough attorney for the North Slope Borough. The Attorney General appointed AAG Stacie Kraly to serve as the section's new supervisor. Good luck Kristen and welcome Stacie!

Legislation/Regulations

THIRD SPECIAL SESSION ADJOURNS

During June 2002, the legislation and regulations section provided legal assistance to the executive branch for the third special session called by the governor. The special session call dealt with the extension of the Regulatory Commission of Alaska and appropriations for veterans in the Alaska Pioneer's and Veteran's Home.

The section also facilitated preparation of bill reviews to advise the governor on legal issues in legislation pending governor's action.

The section processed some major regulations projects, including grant regulations for the Department of Health and Social Services, hearing procedures for the Department of Environmental Conservation, and Medicaid payments for rural health clinics.

Natural Resources

OUR LOSS, COMMERCIAL'S GAIN

The Anchorage Natural Resources section lost a position in the recent budget cuts. As a result, AAG Linda Kesterson will become a full time member of the Anchorage Commercial section as of July 1. We are very sorry to lose Linda, and we wish her well in her new endeavors. We are glad she is just moving downstairs.

TRUE NORTH MINE PROJECT

In the True North Mine Project appeal, the superior court denied Neighborhood Mine Watch's motion for an additional \$6,960 in attorney's fees. Neighborhood Mine Watch was already awarded \$22,242 in fees as public interest litigants (54% of the fees requested).

The Fairbanks Natural Resources section assisted DNR in issuing two decisions on the mine project. First, DNR issued its approval to an amendment of the plan of operations for the True North mine to allow for expansion of the mine pit. Second, DNR issued its decision on remand (in accordance with the superior court's order in *Neighborhood Mine Watch v. DNR*) that looks at the economic impact of the mine

road right-of-way on neighboring land uses, including the aurora viewing industry.

PRELIMINARY INJUNCTION DENIED IN *PETERSON, et al. v. STATE, BOARD OF FISHERIES*

At a hearing on June 13, 2002, the superior court at Anchorage denied the plaintiffs' request for a preliminary injunction in *Peterson, et al. v. State, Board of Fisheries*. The plaintiffs are setnetters who fish for sockeye salmon in Kodiak's Alitak Bay. Alitak Bay is the outermost of three bays through which sockeye salmon pass in returning to their spawning streams. After passing through Alitak Bay, the salmon next pass through Moser Bay and finally Olga Bay. In recent years a dispute has arisen between the Alitak Bay setnetters on the one hand, and the Olga and Moser Bay setnetters on the other, in which the latter group claims that the Alitak Bay setnetters are intercepting too many of the returning salmon.

In an attempt to resolve the dispute, the Board of Fisheries adopted regulations at its January 2002 meeting allocating a greater share of the salmon to the Olga and Moser Bay setnetters. The Alitak Bay setnetters now complain that they are left with too few salmon, and the plaintiffs have filed suit to have the board's regulation declared unlawful on various grounds. In addition, pending a final decision on the merits, the plaintiffs requested a preliminary injunction to prevent the regulation from being implemented during this season's fishery. In denying that request, the court held that the plaintiffs had not shown a likelihood of success on the merits. Further proceedings pending. AAGs Steve White and Blaine Hollis are handling the case.

CHIGNIK CO-OP FISHERY SUCCESSFULLY DEFENDED

On June 28, 2002, Judge Collins of the Juneau superior court denied a motion for preliminary injunction to enjoin implementation of the Board of Fisheries regulation authorizing allocation to

a commercial salmon fishing cooperative in the Chignik purse seine fishery. The regulation was adopted in January, and a 77-member co-op received a permit and began fishing with 17 boats instead of 77, greatly reducing overhead expenses. Two of the twenty-three remaining permit holders sued to enjoin the regulation, even though the per capita allocation to the open fishery was almost 1.4% compared to the co-op's .9%. The court ruled that the plaintiffs had not demonstrated irreparable harm, that the co-op would suffer certain harm, and that plaintiffs had not made a clear showing of probable success on the merits. The court also denied plaintiff's motion to certify a class action because the class was not so numerous that joinder was impracticable. The co-op option was viewed by the Board of Fisheries as an experiment to address the severe economic challenges facing the commercial salmon industry in Alaska.

IBLA APPEAL FILED REGARDING ISLANDS WITHIN THE COPPER RIVER

On June 21, 2002, AAG John Baker filed the state's brief in appeal of the State of Alaska, IBLA No. 2001-387, an administrative appeal challenging a BLM decision to convey certain lands to Ahtna, Inc. Included in the conveyance decision are islands within the Copper River that appear to have been submerged, and therefore owned by the state, at the time of Alaska Statehood. BLM has employed a survey "policy" known as the "5% rule" under which lands containing at least 5% upland vegetation are considered uplands and therefore proper for conveyance. As the state's brief points out, however, BLM's "policy" is not contained in either a regulation or the agency's own surveying manual. BLM has also failed to perform a field investigation to confirm the presence of terrestrial vegetation, and appears to have relied solely on aerial photography from 1977 forward, rather than data more contemporaneous to the date of Alaska Statehood. A decision from the

Interior Board of Land Appeals is not expected for several months.

Oil, Gas, & Mining

DNR ISSUES PROPOSED DETERMINATION TO RENEW TAPS LEASE

The renewal process for the Trans Alaska Pipeline System (TAPS) Right-of-Way Lease passed a substantial milestone on July 5, 2002 with DNR Commissioner Pourchot's publication of a proposed determination approving renewal of the TAPS Lease for an additional thirty-year period. The Commissioner's determination was based primarily on a lease renewal report issued by the State Pipeline Coordinator's Office (SPCO). The report outlines the statutory requirements for renewal and describes the review process completed by the SPCO to: (1) identify compliance documentation in the SPCO database produced through the regular SPCO oversight of TAPS; (2) review reports produced by all state administrative agencies that assess each agency's regulatory requirements that have application to the TAPS lessees, and determine whether lessees' are in compliance with those regulations; and (3) document additional compliance work undertaken by the SPCO in the past two years to supplement the database documentation, for lease terms and stipulations that had not been the subject of a recent compliance review.

AAG Philip Reeves has spent substantial time over the past six months working with the SPCO and the DNR Commissioner's office to determine the necessary scope of the SPCO's lease renewal review and the documentation necessary to meet legal standards for the Commissioner's renewal determination. He also assisted in the drafting of the SPCO report and the Commissioner's determination. Publication of the proposed renewal decision opens an extended period of public hearings and opportunity for public comment, closing in

September, with a final renewal determination expected to be issued in November.

DNR lease renewals for five of the north slope oil pipelines are also currently proceeding under basically the same timelines and process as the TAPS renewal.

Special Litigation

SUPERIOR COURT REVERSES WORKERS' COMPENSATION BOARD ON PETITION FOR REVIEW

The superior court in Kodiak granted the State of Alaska's Petition for Review in *Welte v. State of Alaska*, reversing a decision by the Alaska Workers' Compensation Board finding that the state was not timely in requesting reconsideration of a board decision. The 15-day deadline for seeking reconsideration of the board's decision fell on a Saturday and the state filed for reconsideration on the next business day, the following Monday. The board concluded that the 15-day time limit did not allow for any extension of that period when the last day fell on a weekend or holiday. In reversing the board's decision, the superior court determined that when the deadline for seeking reconsideration of an administrative decision falls on a legal holiday or weekend, the filing deadline is extended to the next business day. Judge Hopwood reasoned that extending the deadline to the next business day allowed a party the benefit of the entire 15-day period to seek reconsideration of an administrative decision. AAG Patti Shake handled both the underlying case and the Petition for Review on behalf of the State of Alaska as employer.

STATE AWARDED SUMMARY JUDGMENT IN INMATE SUIT

Superior Court Judge Brown in Kenai granted the State's Motion for Summary Judgment in a tort claim by a female inmate at Wildwood Pretrial who sued for damages alleging that a male inmate had inadvertently seen her naked for approximately 2 - 3 seconds during a strip search at the pretrial facility. In granting the state's motion, Judge Brown adopted the state's reasoning that the female inmate had a limited expectation of privacy while in jail and that the brief invasion of her privacy was *de minimus* and therefore did not violate what limited expectation of privacy the female inmate could reasonably have under the circumstances.

AAG Eric Aarseth, who took over the case FROM Bill Morse who was appointed to the Anchorage superior court, has moved for 75% of the state's attorneys fees and full costs based on an earlier offer of judgment that was rejected by plaintiff.

Transportation

YELLOW EAGLE MINE SUIT SETTLED

Gold miners excavated a large pit next to the Parks Highway near Fairbanks, destabilizing the highway. AAG Gary Gantz assisted DOT&PF in suing the mining companies, their directors and shareholders, and the landowner. The defendants resisted vigorously. Gary persistently tracked shell corporations, dissolved corporations, and individuals through four foreign countries and the United States to obtain service on all defendants. Immediately prior to hearing on DOT&PF's emergency injunction request, defendants granted DOT&PF access to the mining property to construct a bulwark to prevent further slumping of the roadway. Following joinder of all the defendants and resolution of initial discovery issues in the state's favor, DOT&PF, defendants and their insurers participated in mediation,

resulting in the payment to the state of \$2.6 million for past and future damages.

HATCHERY DESIGN CLAIM REMOVED TO ADMINISTRATIVE FORUM

The state filed a professional malpractice claim in superior court against the designers of improvements to the Department of Fish and Game's Fort Richardson Hatchery. The designers insisted the claim should be heard by DOT&PF hearing officers, rather than by a court. At the designer's behest, the court dismissed the claim to allow it to proceed in DOT&PF's administrative forum. The designer's strategy is ironic, since contractors pursuing claims in DOT&PF's administrative forum often assert they should instead be granted a hearing in court. AAG Tom Dillon is pursuing the state's claim, with the assistance of outside counsel.

O'BRIEN CREEK ROAD CLOSURE

This month we assisted DOT&PF in drafting the wording for a new sign on the O'Brien Creek trail south of Chitina, a popular dipnetting area. A standard road barricade with a "road closed" sign mounted on it had been tossed to the side of the road and a dirt berm that DOT&PF placed across the road had been dug out so vehicles could proceed into the closed area. The new sign reads: "Warning this road and area are closed to all persons. This area is unstable, and any use of this area could cause serious injury or death. Passage beyond this point is prohibited."

Criminal Division

BARROW

Tom Temple assumed the duties of Barrow ADA on May 28, 2002.

The grand jury heard a wide variety of charges against nine defendants and indicted all of them on all counts, ranging from bootlegging, assault II, failure to appear, to sexual abuse of a minor in the first degree. The SAM case involved a defendant who assaulted a 4-year-old girl only five months after he was released from prison after serving a 15-year sentence for his second sexual assault conviction. Under the terms of the federal injunction against the Alaska Sex Offender Registration Act, however, the people of Barrow were not able to be advised of the whereabouts of this lifelong sexual predator.

BETHEL

David David was found guilty after a jury trial of sexual assault in the first degree. He had been tried in December 2001 and that trial had resulted in a mistrial.

Ryan Bukowski was convicted of violating conditions of release and found not guilty of vehicle theft in the second degree after a jury trial.

The June grand jury handed down indictments against 14 individuals on charges including assault, kidnapping, sexual abuse of a minor, manufacturing alcohol, burglary, and tampering with evidence.

FAIRBANKS

In a trial that lasted nearly two weeks, a Nenana jury acquitted Larry Wholecheese of Galena of multiple counts of sexual abuse of a minor, but convicted him on felony charges of escape and assault in the third degree, arising from a standoff with police after the victim disclosed. Interestingly, the reason the victim delayed disclosure was because the defendant had threatened to do exactly that if she ever told. The trial was complicated by the defense bringing in numerous friends and relatives of the defendant to impugn the 13-year-old victim and an adult woman who accused him of abusing her in 1991. The trial was held in Nenana, rather than Fairbanks, because the presiding

judge determined it was a more comparable community.

20-year-old Matthew Pease-Madore of Delta Junction was sentenced to a composite term of 49 years in jail with 20 years suspended for sexually abusing or assaulting seven boys. A jury convicted him on 19 out of 23 counts in March.

Troopers in Kaltag investigated the shooting by an Alaska State Trooper of an intoxicated suspect in a domestic violence assault. The defendant had assaulted his wife and was known to have firearms in his home. At the time of the shooting, he had pointed his gun at the responding trooper.

The number of DWI cases referred for prosecution this month was more than double that for the same period last year. The increase is almost exclusively attributed to increased enforcement by AST.

In personnel matters, two misdemeanor attorneys have left, Frank Spaulding and Dana Merriman. Their replacements will not start until August 1 and September 1.

A notice of intent to award a bid went out this month in regards to new space for the DA's office. The new courthouse opened in August 2001, and the DA's office remains the sole tenant of the old court building nine blocks away. The proposed new space will be only two blocks away, and Adult Probation is expected to occupy adjacent space.

KENAI

At a re-sentencing hearing, Judge Link reduced Michael Glaser's sentence for two counts of murder in the second degree and one count of assault in the first degree to a composite 22 years with 9 years suspended. Originally Link had given him a sentence of 55 years with 33 suspended for the offenses. Glaser pled open to the charges which were

filed after he killed two people and seriously injured another in a DWI crash. He then appealed the sentence. The Court of Appeals originally remanded with instructions for Link to better explain why he gave that sentence. Link then, sua sponte, asked the court to return jurisdiction to him to re-sentence because he believed he had erred.

At a sentencing hearing following jury trial for felony DWI, BTR, DWLR, and MICS 6, Judge Harold Brown denied a request to allow Rebecca Gunderson Nygren credit for time spent on an electronic monitoring ankle bracelet. At the hearing the defendant did not call any witnesses to testify about the monitoring program and the state argued that the defendant had not met the burden of establishing that the program met the requirements of Nygren. In denying Nygren credit, Judge Brown did not simply rely on the defendant's failure to meet her burden, but specifically stated that he didn't believe that the ankle-monitoring program met the requirements of Nygren.

Frank Canty was convicted of violating a domestic violence restraining order following a jury trial in Seward. Approximately five minutes after the court had granted the order following a DVRO hearing, the defendant stopped his vehicle in the middle of the street, got out, and yelled at the petitioner that he was "going to ruin her life". The jury took little time to determine the defendant's guilt after hearing testimony from the petitioner and a local construction worker who observed the interaction from the roof of a nearby building he was renovating.

The Kenai office had a grand jury case for sexual abuse of a minor in which the defendant was married to a woman who ran a daycare center. This afforded him access to young potential victims, at least two of whom were subjected to his abuse. He was also charged with multiple counts of child pornography, which was found on the computer he used at his home.

Defendant Diane Emerton drove while intoxicated and caused a vehicle accident. The accident resulted in injuries to one of her young sons, who was a passenger in her car, as well as a male victim in the car she hit. Although the case was brought before the grand jury for one count of assault III for injuries to the minor, the grand jury added an additional count of assault III for injuries to the victim whose car she hit.

Kenai's summer intern, Sheila Quinlan, won her first criminal jury trial. It was a DWI case where the major issue was whether the person was operating. Quinlan and opposing seasonal defense counsel Mitchel Schapira sparred from 8:30 a.m. until 8:00 p.m. with a few short breaks. The jury took about one hour to return the guilty verdict.

KETCHIKAN

Our summer intern, Bernie Crowley, got a conviction in a jury trial. Andrew Farstad was convicted of a minor consuming alcohol.

In Wrangell, Alijah Cowan was found not guilty of two counts of assault in the fourth degree.

Grand jury was busy. A Ketchikan man found a prescription issued to his now-deceased grandmother and, after making a couple of alterations in the date and the amount of the schedule IA substance, went to the pharmacy at the local Wal-Mart and got it filled. As a result, he has been charged with two counts of misconduct involving controlled substance in the fourth degree.

A Colorado man arrested on a fugitive warrant for breaking parole on illegal drug and burglary convictions has also been indicted for multiple counts of misconduct involving controlled substance in the fourth degree and theft in the second degree for breaking into the hospital pharmacy and stealing lots of drugs and for stealing lots of

cameras from the local Carrs store where he was temporarily working.

A Ketchikan man was indicted for DWI, assault in the second degree, and assault in the third degree for crashing his car while intoxicated and injuring several passengers. Two Craig men were indicted on multiple charges of misconduct involving controlled substances in the third degree. A Wrangell man was indicted for sexual abuse of minor in the second degree. A Metlakatla man was indicted for sexual abuse of minor in the second degree. Others were charged with felony failure to appear, felony DWI, forgery, misconduct involving controlled substance in the fourth degree, and vehicle theft.

KODIAK

A 20-year-old Ouzinkie man pled to criminal mischief in the second degree, a class C felony, and assault in the fourth degree, a class A misdemeanor, after his destructive drunken rage had placed other members of his household in fear of personal injury. In addition to serving 45 days in jail, his probation conditions include that he must enter and complete an alcohol treatment program and an anger management control program. In addition he is to totally refrain from the use of alcohol during his four-year-term of probation.

A 43-year-old Kodiak man was indicted on one count of theft in the second degree, a class C felony, after six months of filing for and receiving unemployment insurance while he was holding down two and sometimes three separate jobs. A September trial date is pending.

A 40-year-old Kodiak man was arrested and charged with three counts of misconduct involving a controlled substance in the fourth degree, all class C felonies, after investigators with the Kodiak Drug Task Force raided his house and found a very sophisticated marijuana growing operation. The operation included three separate grow areas, a sophisticated

lighting system that tracked across the room as would the sun to make the plants grow stronger, and a carbon dioxide generator to stimulate growth. An October trial date is pending.

KOTZEBUE

A week-long jury trial resulted in the acquittal of Elijah Rock in a sexual abuse of a minor case. The 10-year-old victim testified and did just fine - the jury apparently accepted Mr. Rock's account that he had not done anything.

An Ambler resident, has been charged with stalking in the first degree after leaving eight separate sexually explicit messages on the victim's answering machine. He has previously been convicted of first degree stalking in a case involving the same victim.

A Kotzebue resident was indicted on kidnapping and assault charges after luring his girlfriend's other boyfriend to her home and then holding him captive and assaulting him. The girlfriend assisted the defendant in this plan, but claimed to have been coerced by him.

NOME

John Earthman went to trial on the first delinquency case tried to a jury in Nome in a number of years. The case, a sexual assault, was resolved with a plea, but only after the state had presented its evidence.

A man was indicted on felony assault and kidnapping charges after an incident in early June in Unalakleet. He was reported to be holding several hostages in a residence - the troopers surrounded the house, but were unable to get a response from inside. After several hours, one individual came out of the residence and went to the river to get water. It turns out that individual had been passed out most of the night and had been unaware of anything going on. The troopers were

eventually able to get everyone out - fortunately a couple of witnesses had a better recollection of the events of the evening than the first man.

A woman was indicted for the theft of thousands of dollars in a pull-tab scam in Stebbins and St. Michael. She had stolen a quantity of used pull-tab winners that had been kept by the gaming operator in Stebbins. She then separated the backs of those used pull tabs and glued them to the fronts of new pull tabs, making them look like winning pull tabs. She would then cash in those doctored pull-tabs at bingo games in both villages.

The clear winner in the dumb crook of the month category is Emmanuel Williams. Mr. Williams burglarized Hanson's Store in Nome; entry was made by climbing a ladder onto the roof of the store, then jumping down on to a lower portion of the roof where there was a window open into the store. Williams had moved quite a quantity of merchandise from the store onto the roof when he was surprised by an employee inside the store. He couldn't go back in through the window because that's where the employee was. And, unfortunately, the high portion of the roof (where the ladder was) was too high for Williams to climb back up. Williams saw the police coming (Hanson's is directly across the street from Nome's police station), so he jumped off the roof while attempting to make his escape. The police found him next to the store's dumpster with two broken ankles.

PALMER

Richard Payne started working as an assistant district attorney in the Palmer office on June 26, 2002.

Fred Esquerra was sentenced to 12 years for sexually abusing his five and seven-year-old daughters. The abuse only came to light after the defendant and his wife were arrested for manufacturing methamphetamine in their home and the children were taken away by DFYS and placed with the defendant's mother. The girls eventually revealed the abuse to their

grandmother, who reported to police. When the 12 years is added to the 18 months the defendant received for the drug charge, this defendant will be away from his children long enough that they may have a chance to grow up and heal from his abuses.

Uwe Kalenka was convicted after a bench trial of operating a fish wheel near Glennallen without proper identification. Mr. Kalenka represented himself after firing his attorney at a previous trial call. During trial, he alleged that there was a conspiracy against him. At sentencing, Mr. Kalenka stated that the prosecution of his case was a waste of state resources. He received the standard fine and surcharge.

OSPA

(Office of Special Prosecutions & Appeals)

Personnel News

Bootleggers across the state breathed a sigh of relief upon learning that Mike Burke was no longer OSPA's bootlegging prosecutor, having transferred to the violent crimes unit in the Anchorage DA's Office.

Petitions & Briefs of Interest

Petition of Interest

Prior out-of-state DWI conviction. The state argues that a DWI conviction from a state that does not provide for an independent breath test counts as a prior conviction for purposes of a felony DWI. *State v. Simpson*, No. A-8367.

Briefs of Interest

Search warrant application. The state argues that, when applying for a search

warrant, the police do not have to correctly identify the crime the suspect has committed so long as they have facts that establish probable cause to believe the suspect has committed some crime. *State v. Anderson and Ottaway*, No. A-8231.

Search warrant application. The state argues that, when applying for a warrant to search the home of a suspect believed to be illegally possessing marijuana, the police do not have to rebut the possibility that the possession may be protected under *Ravin v. State*. *State v. Anderson and Ottaway*, No. A-8231.

Consent search. The state argues that a motorist consented to a search when, after being stopped by the police, she said that she did not care whether the officer searched her or her car. *Johnson and Haugen v. State*, Nos. A-7996, A-7998.